Supreme Court, U.S.
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No.

In the Supreme Court of the United States

BROADUS V. STEWART, JR.,

Petitioner

VS.

UNITED STATES OF AMERICA

Respondent

On Petition For Writ of Certiorari
To The United States Court of
Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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16pp

Question Presented for Review

1. Can a conviction for a violation of 18 USC§ 1955 stand, when the specified type of gambling is permitted and regulated by the state in which it was conducted?

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Opinions Below

The District Court's denial of Petitioner's Motion for Writ of Error Coram Nobis, may be found at Appendix A to this Petitioner.

The Fifth Circuit Court of Appeals' denial of Appellant's Appeal may be found at Appendix B to this Petition.

Jurisdiction

The judgement sought to be reviewed is a judgement of the United States Court of Appeals for the Fifth Circuit entered on November 24, 1999. This Court has jurisdiction pursuant to Title 28 U.S.C.§1254(1).

Statutory Provision Involved

18 U.S.C. §1955

(a) Whoever, conducts, finances, manages, supervises, directs or owns all or part of an illegal gambling business shall be fined under this title or imprisoned not more than five years, or both.

(b) As used in this Section -

(1) "illegal gambling business" means a gambling business which -

(i) ***is a violation of the law of a state or politicalsubdivision in which it is conducted***;

(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of $2,000.00 in any single day.

(2) "Gambling" includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulettewheels, or ***dice tables***, and conducting lotter ies,policy, bolita or numbers games, or selling chances there in.

(3) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

Statement of the Case

This case is before this Court due to the decision by the Fifth Circuit Court of Appeals which is in direct contradiction to the long standing decision by the Ninth Circuit Court of Appeals on the same important matter.

This decision by the Fifth Circuit Court of Appeals also conflicts with a relevant decision by the U.S. Supreme Court.

The Fifth Circuit Court of Appeals has misinterpreted a Federal Statute that has long ago been defined by the U.S. Supreme Court, and the Ninth Circuit Court of Appeals.

This misinterpretation has led to a person being convicted of "an act that the law does not make criminal."

Reason for Granting the Writ

The type of gambling specified in Petitioner's 18 U.S.C. §1955 conviction is permitted and regulated by the state in which it was conducted. This conduct does not meet the definition of 18 U.S.C. §1955 (a)(b)(1)(i) as opined by the Ninth Circuit Court of Appeals, U.S. Supreme Court, and the old Fifth Circuit Court of Appeals.

On June 29, 1990, the Mississippi Legislature enacted the Mississippi Gaming Control Act of 1990, which is codified at Sections 75-76-1/75-76-313, Mississippi Code of 1972, as Ann.

Passage and enactment of this statute made Mississippi a Class III gambling state. (Class III gambling includes all gambling.) This has been certified by a Federal Court. Mississippi is a state that permits Class III gaming "for any purpose by any person, organization, or entity ....." Willis v. Fordice, 850 F. Supp. 523, 532, (S. D. Miss. 1994)

The government seems to be hung up on the fact that a lot of these cases involve Indians, and since Petitioner is not an Indian the rulings do not apply in his case. This is absurd. These are cases brought by Indians to compel the

Federal Government to analyze and interrupt state gambling laws.

The judge in Fordice Supra opined that Mississippi permits Class III gaming for any purpose by any person (ID P. 532) not just any Indian.

Sections 75-76-5(k) specifically enumerates dice games such as craps to be permitted forms of Class III casino gambling, under the "Mississippi Gaming Control Act." Dice games such as craps are permitted and have been regulated by the Mississippi Gaming Commission since June 29, 1990. This is evidenced by all thirty one casinos in Mississippi having dice tables and playing a dice game called Craps.

Since Petitioner's trial was March 7, 1991 and dice games have been permitted and regulated since June 29, 1990 the only regulation petitioner violated was not obtaining a regulatory license and this is not penal. Section 97-33-29 states:

All laws made or to be made for the suppression of gambling or gaming, are remedial and not penal statutes, and shall be so construed by the courts.

In a state where Class III gambling is permitted and regulated and not against Public Policy, the U. S. Supreme Court has opined that the specified type of gambling in a 1955 prosecution must be criminal/prohibited to satisfy the state law violation requirement. California v. Cabazon Band of Mission Indians, 107 S. Ct. 1083, 1089 (1987), 480 U.S. 202, 94 L. Ed. 2d. 244.

If the type of gambling specified in a 1955 prosecution is permitted and regulated by the state then it can't be a predicate offense for purposes of federal illegal gambling statute. U.S. v. Gordon, 464 F. 2d. 357 (9th Cir. 1972). U.S. v. Berent, 523 F. 2d. 1360 (9th Cir. 1975). Seminole Tribe of Florida v. Butterworth, 658 F. 2d. 310, 313-315 (5th Cir. 1981).

Also, "where there is ambiguity in a criminal statute, doubts are resolved in favor of the defendant." U.S. v. Bass, 92 S. Ct. 515, 523, 404 U. S. 336, 30 L. Ed. 2d. 488 (1971).

Petitioner's other conviction 18 U.S.C. §371 depends upon the existence of an "illegal gambling business" under 1955. U. S. v. E. C. Investments, Inc., 77 F. 3d. 327, 329 N. 2 (9th Cir. 1996).

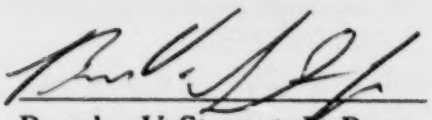
Petitioner did not meet the requirement of 1955 (a)(b)(1)(i) that the specified type of gambling be a violation of state law. Consequently, Petitioner has been convicted of "an act that the law does not make criminal." This is a complete miscarriage of justice that justifies relief Davis v. U. S., 94 S. Ct. 2278 (1974), 417 U. S. 333, 41 L. Ed. 2d. 109.

Conclusion

For the reasons set forth above, a Writ of Certiorari should issue to review the judgement and opinion of the Court of Appeals in this matter.

Date 2-4-2000

Respectfully submitted,



Broadus V. Stewart, Jr. Pro-se

APPENDIX A

FILED Dec 7, 1998

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

BROADUS V. STEWART, JR.	PETITIONER
VS.	3:90 CR 91LS
UNITED STATES OF AMERICA	RESPONDENT

ORDER

This cause is before the court on the Motion of Petitioner Broadus V. Stewart, Jr. for writ of error coram nobis pursuant to 28 U.S.C. § 1651.[1] By his motion, Stewart urges this court to reverse his 1991 convictions & for violations of 18 U.S.C. § 1955 and 19 U.S.C. § 371, for which he has fully served his sentence, on the ground that gambling (and a dice table and craps, in particular) is not illegal under Mississippi law. He submits, therefore, that his conviction is for a non-criminal act and must be reversed. The court is not persuaded, however, that the gambling activities of this petitioner were, in fact, legal under state law.

Accordingly, it is ordered that petitioner's motion for writ of error coram nobis is denied.

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[1] The Supreme Court revived the ancient writ of error coram nobis in United States v. Morgan, 346 U.S. 502, 74 S. Ct. 247, 98 L. Ed. 248 (1954), by holding that the writ was available in federal courts pursuant to the All Writs Act, 28 U.S.C. § 1651(a). United States v. Dyer, 136 F.3d 417, 422 (5th Cir. 1998). "Since that time the writ has been used as an avenue of collateral attack when the petitioner has completed his sentenc and is no longer 'in custody' for purposes of seeking relief under either 28 U.S.C. § 2241 or § 2255," Dyer, 136 F.3d at 422.

SO ORDERED this 7th day of December, 1998.

/s/ TOM S. LEE

UNITED STATES DISTRICT JUDGE

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Filed Nov 24 1999

No. 98-60785
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BROADUS V. STEWART, JR.,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. J-90-CR-91-5-L

Before **HIGGINBOTHAM, DeMOSS, and STEWART,** Circuit Judges.

PER CURIAM:*

Broadus V. Stewart, Jr. appeals the district court's denial of his motion for a writ, of error coram nobis seeking

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* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

the reversal of his conviction for operating, and conspiring to operate, an illegal gambling business, in violation of 18 U.S.C. §§ 1955 and 371. Stewart argues that his gambling operation did not violate state law, as is required for liability under § 1955.

In United States v. Morgan , 346 U.S. 502, 512 (1954), the Supreme Court emphasized that the writ of coram nobis could not be used as a substitute for appeal and should only be employed to correct errors of the most fundamental character. United States v. Dyer, 136 F.3d 417, 422 (5th Cir. 1998) . The petitioner bears the considerable burden of overcoming the presumption that previous judicial proceedings were correct. Dyer, 136 F.3d at 422.

Title 18 U.S.C. § 1955 prohibits conducting, financing, managing, supervising, directing, or owning all or part of an "illegal gambling business." See 18 U.S.C. § 1955 (a) , Under Section 1955 (b) (1) , an illegal gambling business is defined as a gambling business that: (1) violates state or local law; (2) is conducted, financed, managed, supervised, directed, or owned by five or more people; and (3) is in continuous operation for more than 30 days or has a gross revenue of $2,000 in any single day.

The district court did not err in finding that Stewart failed to prove that his gambling operation did not violate Mississippi state law. Miss. Code Ann. § 97-33-1 prohibits gambling except on certain vessels or where made legal under Mississippi law. Stewart's gambling business was not conducted on a vessel, and Stewart has not asserted that his gambling operation was licensed, as is required for legality under Mississippi law. See Miss. Code Ann. § 75-76-3(l).

There is no merit to Stewart's assertions that Mississippi permits all forms of gambling for any purpose by any person, organization, or entity and, thus, that the form of gambling engaged in must be "criminal/prohibited," and not merely regulated, by Mississippi in order to satisfy § 1955's state law violation requirement. Stewart's assertions are primarily based on caselaw addressing the state regulation of gambling on Indian lands, which is not relevant in the present case. See United States v. Hagen, 951 F.2d 261, 264 (10th Cir. 1991) (holding that distinction between regulatory and prohibitory gaming laws was not germane to case involving no issues of jurisdiction over Indian lands) .

For the foregoing reasons, the judgment of the district court is AFFIRMED.